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Ontario Labour Relations Board HIGHLIGHTS

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December 2006

Holiday Season Board Schedule

Please see the attached notices to the community.

Scope Notes

The following are scope notes of some of the decisions issued by the Ontario Labour Relations Board in November of this year. These decisions will appear in the November/ December issue of the OLRB Reports. The full text of recent OLRB decisions is now available on-line through the Canadian Legal Information Institute at www.canlii.org.

Certification – Practice and Procedure – The union sought an out-of-province summons and a certificate in accordance with the *Interprovincial Summons Act* – The Board was satisfied that pursuant to that Act and the Board's own powers under clause (c) of subsection 111(2) of the *Labour Relations Act, 1995* it has the authority to enforce the attendance of a witness in the same manner as a civil court – The Board was not persuaded, however, that its power extended to the issuance of the certificate pursuant to s. 5 of the ISA – Matter continues

3469051 CANADA INC.; RE CARPENTERS UNION, CENTRAL ONTARIO REGIONAL COUNCIL, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA File No. 1654-06-R; Dated November 15, 2006; Panel: Caroline Rowan (3 pages)

Certification – Timeliness – The Labourers applied to represent non-construction employees of Belanger – The Operating Engineers ("Local 793") asserted that their all-employee collective agreement encompassed the employees in question, so the application was untimely – The work related to highway maintenance contracts Belanger entered into with the City of Sudbury and the Ministry of Transportation – Belanger used a combination of Local 793 members and other individuals to perform the work, and Local 793 had never taken steps to enforce the collective agreement it claimed related to the highway maintenance work – The Board held that a collective agreement that requires an employer to pay its employees in a particular way when they are performing work outside the scope of the agreement does not extend the scope of the agreement to cover that work – Timeliness argument dismissed, matter continues

BELANGER CONSTRUCTION (1981) INC.; RE LIUNA, ONTARIO PROVINCIAL DISTRICT COUNCIL; RE IUOE, LOCAL 793; RE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 2486; File No.2890-05-R; Dated November 15, 2006; Panel: Harry Freedman (9 pages)

Employment Standards – Grand & Toy challenged an order requiring it to amend its vacation pay policy that provided one annual lump sum payment of vacation pay to employees on a fixed date – The Act requires that employees be given two weeks vacation after the completion of an entitlement year and that a lump sum payment of accrued vacation pay be made prior to the employee's commencement of the vacation – The Board found such a fixed payment did not violate the Act and in some instances could even be construed as a greater right or benefit – Compliance Order rescinded

GRAND & TOY LIMITED.; RE DIRECTOR OF EMPLOYMENT STANDARDS; File No. 2988-05-ES; Dated November 21, 2006; Panel: Corinne F. Murray (8 Pages)

Construction Industry – Duty to Bargain in Good Faith – Standing – Unfair Labour Practice – To secure itself a subcontractor to install cedar shingles, SLR signed a collective agreement with the Carpenters, after having been told by the subcontractor that the Residential Roofing Agreement was standard across the province and included a letter of understanding specifying wage rates for cedar shingling – After the subcontractor abandoned its contract with SLR, and SLR was forced to pay another entity higher rates to complete the work, SLR complained that both the subcontractor and the Carpenters had violated sections 17 and 70 of the Act, because the agreement SLR was given to sign was not in fact standard across the province – The Board held that an employer has no standing to bring a complaint under s. 70, so that element of the application was dismissed – With respect to the duty to bargain in good faith, the Board found that the Carpenters did not hold bargaining rights for the employees at the time that bargaining with SLR took place, so no such duty arose in the circumstances – Application dismissed

S.L.R. ROOFING AND SHEET METAL; RE CARPENTERS AND ALLIED WORKERS LOCAL 27, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA; RE ROBERT SHEWELL; RE 6221220 CANADA INC. O/A JIM'S ROOFING AND JIM LEBLANC File No. 3608-05-U Dated November 1, 2006; Panel: Harry Freedman (8 pages)

Construction Industry Grievance – The Carpenters grieved the denial of access to the construction site of a massive new intake channel being built under the city of Niagara Falls on property owned by Ontario Power Generation – Although it had no members working at the site, the union argued that it needed access to gather evidence for the jurisdictional dispute it had filed – Strabag resisted access, citing health and safety reasons, confidentiality and security – The Board held that since access had been duly negotiated and formed part of the collective agreement between the Carpenters and EPSCA, the employer's categorical denial of access could not be substantiated – The employer was allowed to impose restrictions to access that paralleled those of union representatives with members on site – Grievances against OPG and EPSCA dismissed; grievance against Strabag allowed

STRABAG INC.; RE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 18; RE ONTARIO POWER GENERATION INC. AND ELECTRICAL POWER SYSTEMS CONSTRUCTION ASSOCIATION File No. 1453-06-G; Dated November 9, 2006; Panel: David A. McKee; John Tomlinson; Alan Haward (7 pages)

Conflict of Interest – Standing - Trusteeship – In the continuing battle between LIUNA and Local 183, the trustee asked the Board to declare that 183's Jurisdictional Committee had no standing to continue in this litigation, and that 183's lawyers were in a conflict of interest because of their access to and knowledge of confidential information relating to the trusteeship – Given that the Committee was extinguished when the trusteeship was imposed, and that the trustee purported to dissolve the Committee in any event, the Board declared that the Committee was no longer an entity capable of continuing to participate in these matters; the two remaining members of the Committee were added as individual parties to this litigation – On the conflict issue, the Board held that the law firm possessed no confidential knowledge outside of what it had learned from its clients to support the litigation – Since there has been no change in positions, and no individual lawyers moving from one side of the litigation to the other, the Board found no conflict and allowed the firm to continue to represent its clients

UNIVERSAL WORKERS UNION, LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183; RE LIUNA ET AL; File Nos. 2049-03-U et al; Dated November 2, 2006; Panel: Norm Jesin (7 pages)

Court Proceedings

Construction Industry Grievance - Contempt – Stated Case - The Board stated a case for contempt to Divisional Court when the responding party failed to attend a hearing or comply with production orders issued by the Board – When the responding party failed to appear at court, the Court found it to be in contempt of the Board and awarded a fine – The Court then made its own production order and adjourned the matter for one month to afford the responding party an opportunity to comply

D.M.S. CONCRETE & GENERAL CONTRACTING INC.; RE OPERATIVE PLASTERERS' CEMENT MASONS' AND RESTORATION STEEPLEJACKS'

INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, UNION LOCAL 598 AND ONTARIO LABOUR RELATIONS BOARD; 4212-05-G; 4213-05-G; 0330-06-G Court File Nos. 244/06, 326/06; Dated November 3, 2006; Panel: Cunningham ACJ. Macdonald and Swinton, JJ.

The decisions listed in this bulletin will be included in the publication Ontario Labour Relations Board Reports. Copies of advance drafts of the OLRB Reports are available for reference at the Ontario Workplace Tribunals Library, 7th Floor, 505 University Avenue, Toronto.

Pending Court Proceedings

Case name & Court File No.	Board File No.	Status
LIUNA 183 v. Masonry Contractors' Association of Toronto et al Divisional Court No. 559/06	2049-03-U et al	**Pending**
Comstock Canada et al v. United Association of Journeymen and Apprentices in the Plumbing and Pipefitting Industry of the United States and Canada, Local 527 Divisional Court No. 522/06	2558-03-JD	Pending
Janet Kitson v. OLRB et al Divisional Court No. 492/06	4205-02-U	Pending
Maystar General Contractors Inc. v. The International Union of Painters and Allied Trades, Local Union 1819 Divisional Court No. 481/06	0812-06-R	December 6, 2006
Johnson Controls Ltd. v. Brookfield Lepage Divisional Court No. 406/06	1634-04-R	January 24, 2007 (motion)
TTC v. Amalgamated Transit Union Divisional Court No. 261/06	0618-06-U; 0620-06-U	Pending
Abduraham, Abdoulrab v. Novaquest Finishing Divisional Court No. 327/06	2222-04-ES, 2223-04-ES, 2224-04-ES	Pending
C.M.G. Innovation Co. v. Ontario Pipe Trades Council and United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 819 Divisional Court No. 06-DV-1234 OTTAWA	0652-03-R	November 23, 2006
D.M.S. Concrete & General Contracting v. Plasterer's Local 598 (Stated Case) Divisional Court No. 326/06	0330-06-G	December 7, 2006
D.M.S. Concrete & General Contracting v. Plasterer's Local 598 (Stated Case) Divisional Court No. 254/06	4212-05-G; 4213-05-G	December 7, 2006
Place Mont Roc v. United Steelworkers (Stated Case) Divisional Court No. 233/06	1684-05-U; 3719-05-U	Pending
City of Hamilton v. Carpenters, Local 18 Divisional Court No. 209/06	1785-05-R	Pending
Guild Electric Limited et al v. IBEW, Local 1739 Divisional Court No. 202/06	4179-05-U; 4307-05-M	January 10, 2007
Elena, De Monelli Foerster v. Toronto Catholic District School Board (Civil Suit) Divisional Court No. 06-CV-310231PD1	1373-04-U	March 19, 2007
Bricklayers Local 7 v. 921879 Ontario Ltd. et al Divisional Court No. 06-DV-1209 OTTAWA	3261-04-JD; 3504-04-JD	April 3, 2007
Gus Nedelkopoulos v. OLRB Divisional Court No. 78978/06 NEWMARKET	1838-05-U 2644-05-U	Pending
Greater Essex County District School Board v. International Brotherhood of Electrical Workers, Local 773 et al Divisional Court No. 126/06	1702-04-R; 3120-04-R; 3172-04-R; 3173-04-R; 3174-04-R	August 15, 2006 (reserved)
Kostantinos Iaonnidis v. Amalgamated Transit Union, Local 1572, Corp. of City of Mississauga, Transportation and Works Dept., Transit Division Divisional Court No. DC 0500947400	2287-04-U	August 30, 2006 (reserved)
Century Bldg. Restoration Inc. v. Universal Workers Union LIUNA Local 183, et al Divisional Court. No. 76931/05 NEWMARKET	1880-04-G	Pending

Mississaugas of Scugog Island First Nation v. Great Blue Heron et al Divisional Court No. 10/04	1271-03-U; 1336-03-M; 1414-03-M	Dismissed – May 31, 2006, leave to appeal to C.A. granted – Oct. 30/06
Grantley Howell v. OLRB Divisional Court No. 04/178 HAMILTON	0933-01-U; 1273-01-U 3552-00-U	Dismissed – April 3, 2006, seeking leave to appeal to C.A.
Scaduto, Frank Divisional Court No. 382/05	1798-03-U; 4338-02-U	Jan/Feb. 2007
Tuquabo, Dawitt Divisional Court No. 03-DV-000935	2377-02-U	Dismissed Feb. 14/05; leave to appeal dismissed Jun 29/05; seeking leave to S.C.C.